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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

DATE: **APR 02 2012** OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was a postdoctoral researcher at the California Institute of Technology (CalTech). U.S. Citizenship and Immigration Services (USCIS) records indicate that she now works at [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of prior submissions.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien (or corresponding sections of ETA Form 9089), in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director,

however, did not raise this issue. The AAO will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term “prospective” is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on July 29, 2010. In an accompanying statement, the petitioner described her work:

My specialty is in the field of the thermoelectric energy conversion technology. This is one of the renewable energy (i.e. "green energy") technologies that can be used to convert the waste heat into useful electricity. . . . [O]ver 80% of the energy used in an automobile is wasted as heat. Developing an energy harvesting device . . . to convert even just [a] fraction of the engine heat into electricity will improve the energy efficiency of the automobile. . . . In fact, I have received a fellowship from [REDACTED] to research this technology. I have also worked for the [REDACTED] to research technologies to accurately measure efficiency of thermoelectric materials that could be utilized for deep space missions, where there is minimal sunlight, necessitating the heat-to-electricity conversion.

I am currently one of the leading scientists in this field. In particular, my research focuses on the measurement of thermoelectric properties, i.e., how much electricity is converted from heat in a particular thermoelectric material. At [REDACTED] I am working on the development of the national and international standard for measurement protocol for the first time in the field.

The petitioner submitted various background materials to establish the importance of her research area. These materials establish the intrinsic merit and national scope of her research, but do not distinguish the petitioner from others performing similar work.

To address her individual role, the petitioner submitted five letters. [REDACTED] who supervised the petitioner's graduate studies at the University of Washington, Seattle, stated:

[The petitioner] and I have jointly published 3 journal papers and several conference publications. . . .

[The petitioner's] Ph.D. research was first-rate, and involved the development of a new class of high-temperature oxide materials based on vanadium pentoxide which were modified by impurity doping to drastically improve their thermoelectric properties. This work stands out as a new and non-traditional approach to thermoelectric materials which offers potential improvements for energy conversion devices which must operate under extreme environmental conditions, and which can also be created very inexpensively and with high precision. [The petitioner's] Ph.D. work demonstrated three key aspects: first, that controlled doping could drastically improve the thermoelectric performance of these materials; second, that this doping could be accomplished in a very inexpensive and highly reproducible manner; and third, that practical devices could be created using these materials. . . . There are presently very few researchers in the US who can claim the same breadth of training and research experience.

[The petitioner's] work has caught the attention of many in the thermoelectric materials area, and after her Ph.D. graduation, she was recruited for a post-doctoral position at the [REDACTED]. During her one-year stay there, she acquired additional expertise in the challenging area of high-temperature thermoelectric measurements . . . and she is currently working in a prestigious research group at [REDACTED] . . .

Thermoelectric energy conversion devices directly convert heat into electricity with no moving parts, and with extremely high reliability. They are poised to play an increasingly important role in our country's energy future. . . . [The petitioner] is currently one of the leading researchers in this field, and she should be considered a valuable resource to our country.

As [REDACTED] noted, after the petitioner completed her doctorate, she spent a year training at the [REDACTED]. The petitioner submitted two letters from witnesses there, offering contrasting perceptions of the petitioner's work there. [REDACTED] leader of ' [REDACTED]' stated:

Since [the petitioner] joined the [REDACTED], she was assigned to develop a high temperature rig to test and characterize thermoelectric (TE) materials at elevated temperatures which was regarded as the most difficult of challenges. [The petitioner] had fabricated a test platform for TE materials . . . [which] was marginally successful. However, her achievement leads the way for possible replicated and redundant tests. Also [the petitioner] has been assigned to . . . the development of advanced thermoelectric (TE) materials. . . . Once a high figure of merit TE material is successfully developed, we would expect a drastic change in energy conversion and cooling systems without moving parts. High performance TE systems will reshape almost all parts of our power infrastructure, too.

. . . [The petitioner performed] the assigned tasks up to a reasonable level.

[REDACTED], a Virginia State University associate professor who "interacted with [the petitioner] at [REDACTED] during the summer research collaboration," called the petitioner "an excellent researcher in her field" and stated:

[The petitioner] had been developing proprietary key technologies to accurately evaluate efficiency of [TE] materials at high temperatures. . . .

Although it is crucial to accurately measure thermoelectric properties of materials at high temperatures, however, it is difficult to do so. . . . In order to overcome this technological challenge, she has developed a unique fabrication method to create a

sample holder so as to provide the stable contacts between the sensor and the sample's surface. . . . We have verified that this method works. . . . With this kind of unique skills in her hands, she is currently continuing her task with [REDACTED] in the [REDACTED]. What they are hoping is to perfect this measurement technique, and eventually develop the national and world standard to create the evaluation protocol for the thermoelectric materials.

[REDACTED] stated:

[T]here is a critical need for researchers with thermoelectric experience. [The petitioner] has this experience and necessary abilities to promote this industry in the USA. . . .

[T]he accuracy of thermoelectric research results . . . are constantly debated. Currently, our lab is focusing on overcoming these issues by identifying sources of errors and compensate [for] them using both hardware and software. [The petitioner] is currently modifying our existing measurement setup, so as to minimize these reading errors. Within just 2 months of her work at Caltech, she has already improved the software to control the test environment . . . and to monitor the temperatures and the voltage readings for more accurate measurements. In the near future, she will be investigating the origin of the voltage offset error at high temperature environment. This work will extend itself to the foundation for a test standard for thermoelectric properties measurements. In fact, we are currently contacted by organizations including [the] National Institute of Standards and Technology as well as similar national labs in Japan and Germany to pursue the establishment of this national standard. [The petitioner's] substantial knowledge . . . in addition to her extensive skills in building thermoelectric test system[s], will be essential in pursuing our goal of making the USA the leader in thermoelectric technology.

[REDACTED] president and chief executive officer of [REDACTED] [REDACTED] stated that the petitioner's "expertise and skill set sits at an important junction of advanced materials and clean energy technology; better enabling the United States to establish energy independence so important to our national security." [REDACTED] described his company's efforts to develop TE technology, and the "often vexing problem" of obtaining accurate measurements, and stated that the petitioner's "research efforts at [REDACTED] play a critical role in the success of our program; accurate measurements of efficiency and performance are crucial metrics in the evaluation of our technology and product development efforts." [REDACTED] letter addressed the nature of the petitioner's work, rather than her specific achievements in that area.

The petitioner submitted copies of excerpts of her published work, and a printout from the Google Scholar database (<http://scholar.google.com>) showing that two of her articles (one published in 2005,

the other in 2007) had accumulated three citations each, for an aggregate total of six citations. The petitioner did not identify the citing articles, so the record does not show how many of the six citations are self-citations by the petitioner and/or her collaborators.

On September 13, 2010, the director issued a request for evidence, instructing the petitioner to submit evidence of independent citation (not self-citation) of her published work, and to establish the extent of the petitioner's influence in her field. In response, the petitioner submitted further Google Scholar printouts, this time identifying the citing articles (including a new, seventh citation). Two of the seven citations are self-citations by the petitioner and [REDACTED]. Of the remaining five citing articles, two appear to be the same article in two different languages (the respective titles are [REDACTED] and, in German, [REDACTED]). Both articles appeared the same year [REDACTED] in the same journal [REDACTED] and show the same partial author credits ([REDACTED]). Aside from self-citations and one evident duplicate citation, the petitioner documented four independent citations of her work at the time of the request for evidence.

The petitioner also submitted copies of her published and presented work, as well as background information about her research subject (including some articles that predate the petitioner's research career). The impact and influence of the petitioner's work is not self-evident from these materials; they offer no comparison between the petitioner's accomplishments and those of others performing research on TE materials.

Among the background materials is a printout of a page from the web site of the National Institute of Standards and Technology (NIST), [REDACTED], which reads, in part: "Especially for the case of thin film thermoelectric materials, there are currently no methods to accurately and reproducibly (laboratory to laboratory) measure the material properties that determine thermoelectric conversion efficiency." The printout is dated [REDACTED].

The director denied the petition on January 11, 2011. The director acknowledged the intrinsic merit and national scope of the petitioner's research specialty, but found that the petitioner failed to demonstrate a past history of achievement with some degree of influence on the field as a whole. The director acknowledged the petitioner's witness letters, but found that these letters "speak primarily to the prospective benefit that her research may have, and not to the impact that it has already had on her field." The director also acknowledged the petitioner's published research, but stated that their minimal citation history did not indicate significant influence.

On appeal, counsel asserts that "relying on the number of citations is too simplistic as a method to determine whether one has made and will make substantially greater contributions to the field." Counting citations is not the only means of measuring the impact of a researcher's work, but it is one way to do so. The petitioner's low citation count is not automatically disqualifying by itself, but it does mean that the petitioner must submit other credible, verifiable evidence to show how her work has influenced her field.

Counsel refers back to the NIST printout, indicating that “there are currently no methods to accurately and reproducibly . . . measure the material properties that determine thermoelectric conversion efficiency.” Counsel then states: “The contribution the Self-Petitioner has made in the field is that she has built a prototype measurement instrument at NASA Langley Research Center. There she successfully demonstrated that the methods she developed actually worked.” Counsel asserts that a number of witness letters “have substantiated her success.”

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

The letters considered above express varying degrees of enthusiasm about the petitioner’s level of achievement and the significance of her work. The letters lack specific examples of how those innovations have influenced the field beyond the laboratories where she has trained.

██████████ the witness closest to the petitioner’s work at ██████████ did not state that the petitioner had produced confirmed, replicable results. Rather, ██████████ stated that the petitioner’s “marginally successful” work “leads the way for possible replicated and redundant tests.” This information does not indicate that the petitioner successfully solved the problem of reliable measurement.

Certainly, NIST does not consider the problem to have been solved. The petitioner worked at ██████████ ██████████ As of October 2010, NIST’s web site did not acknowledge the “prototype measurement instrument” that the petitioner had built more than a year before. Rather, the site stated “there are currently no methods” to obtain reliable measurements of thermoelectric conversion efficiency.

Counsel observes that the petitioner has made presentations at several scientific conferences. Counsel states: "The Self-Petitioner would not have been given such opportunities unless she had some significant findings to share with peer researchers." The petitioner submits no evidence of the selection criteria for the conferences. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not support counsel's contention that the conference presentations are, themselves, evidence of the significance of the petitioner's work.

Counsel also asserts: "the Self-Petitioner will be able to make more contributions at [REDACTED], the leading research institution in the particular field." The director, however, did not question the reputation of [REDACTED] or conclude that the petitioner would have no opportunity "to make more contributions at [REDACTED]." The issue was whether the petitioner's past work justifies predictions of future contributions, and counsel, on appeal, has not adequately addressed that issue. Furthermore, the AAO notes that the petitioner has since left [REDACTED] and therefore will not be able to make more contributions there until and unless [REDACTED] rehires her.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.